Sita Ram vs. Tara Chand & Ors.
(S.B.Criminal Revision No.186/93)

Dated:- 1.2.2007.

HON'BLE MR.JUSTICE G.S.SARRAF

Mr.D.N.Yadav, for the petitioner.
Mr.M.C.Bhoot, for the respondent nos.1 &3.
Mr.S.N.Tiwari, Public Prosecutor for the respondent no.4.

This criminal revision petition is directed against the order dated 3.4.1993 of Additional Sessions Judge No.3, Jodhpur whereby the order dated 12.8.1985 of Sub Divisional Magistrate, Phalodi passed under Section 145 Cr.P.C. was set aside.

The petitioner filed a complaint on 9.12.1976 in the court of Sub Divisional Magistrate,Phalodi stating therein that the respondents dispossessed him from the disputed property on 2.12.1976 and therefore it be attached and after enquiry the possession of it be handed over to the petitioner. Both sides produced evidence. After discussing the evidence available on record, Sub Divisional Magistrate,Phalodi by order dated 12.8.1985 declared that the petitioner was in possession of the disputed property within two months next before the date on which the complaint was filed. The respondents filed a revision petition. After hearing the parties, Additional Sessions Judge No.3,Jodhpur by order dated 3.4.1993 allowed the revision petition and set aside the order dated 12.8.1985 of Sub Divisional Magistrate,Phalodi and, inter alia, held that it was

not proved that the petitioner was forcibly dispossessed from the disputed property within two months next before the date on which the complaint was filed by him in the court of Sub Divisional Magistrate,Phalodi. Aggrieved by this order, the petitioner has filed this revision petition.

Heard Mr.D.N.Yadav, learned counsel for the petitioner and Mr.M.C.Bhoot, learned counsel for respondents nos. 1 to 3 .

The petitioner in the complaint admits that he was dispossessed from the disputed property on 2.12.1976. Under the proviso to sub-section(4) of Section 145 Cr.P.C. if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the complaint was filed then he may treat the party so dispossessed as if that party had been in possession of the subject of dispute on the date of his order. Sub Divisional Magistrate,Phalodi does not at all say in his order dated 12.8.1985 that the petitioner was forcibly and wrongfully dispossessed on 2.12.1976 or on any other day within two months next before the date on which the complaint was filed. On the other hand and against the plea taken in the complaint, Sub Divisional Magistrate,Phalodi has held that the petitioner was in possession of the disputed property within two months next before the date on which the complaint was filed. The plea taken in the complaint that the petitioner was dispossessed from the disputed

property on 2.12.1976 is not supported by the evidence adduced by the complainant. Therefore in the facts and circumstances of the case, I endorse the view taken by the learned Additional Sessions Judge No.3,Jodhpur.

There is thus no merit in the revision petition.

The revision petition is dismissed accordingly.

(G.S.SARRAF),J.